

In the Court of Appeals of the State of Alaska

Mario F Page,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-13012**

Order

Date of Notice: **4/16/2019**

Trial Court Case No. **3PA-12-02363CI, 3PA-05-01308CR**

The Appellant, Mario Page, is currently represented by a court-appointed attorney, Owen Shortell. Mr. Page recently filed a motion requesting that he be allowed to represent himself in this appeal, and Mr. Shortell has filed a motion asking to withdraw.

Although Mr. Page wants to represent himself in this appeal, because he has a constitutional right to counsel to assist him in the appeal, unless and until he knowingly and intelligently waives that right, any legal proceedings in which he is not represented by counsel would be void. *See Johnson v. Zerbst*, 304 U.S. 458, 467-68; 58 S.Ct. 1019, 1024-25; 82 L.Ed. 1461 (1938) (holding that a deprivation of the right to counsel is equivalent to a lack of jurisdiction). Thus, if Mr. Page desires to represent himself, then the superior court must determine whether Mr. Page is willing to enter a knowing and intelligent waiver of the right to counsel, and if so, whether he is capable of representing himself on appeal.

Consequently, this Court must remand this case to the superior court to resolve these issues.

Accordingly, IT IS ORDERED:

1. This case is remanded to the superior court for a hearing to determine whether Mr. Page is willing to enter a knowing and intelligent waiver of the right to counsel, and if so, whether he is capable of representing himself on appeal.

2. The superior court shall conduct an inquiry to make sure that Mr. Page understands the benefits of counsel and the dangers of representing himself, and to make sure that Mr. Page is minimally competent to represent himself — *i.e.*, that he is capable of presenting a comprehensible argument on appeal.

3. If, after Mr. Page is advised of the benefits of counsel and the dangers of self-representation, he still wishes to represent himself, and if the superior court concludes that Mr. Page is at least minimally competent to do so, the superior court shall inform this Court of these circumstances.

5. If, on the other hand, Mr. Page decides not to represent himself, or if the superior court concludes that Mr. Page is not minimally competent to pursue this appeal on his own, then Mr. Page will continue to be represented by his current court-appointed counsel, Mr. Shortell, and the superior court shall inform this Court of these circumstances.

6. Because Mr. Page has a constitutional right to the assistance of counsel on appeal, he must expressly and knowingly waive this right if he wishes to represent himself. Accordingly, if Mr. Page is unable to make up his mind about whether to represent himself, this means that he has *not* waived his right to counsel, and he will continue to be represented by his current court appointed counsel.

7. The superior court's report on these matters shall be provided to this Court on or before May 1, 2019.

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8. Mr. Page's motion to represent himself and Mr. Shortell's motion to withdraw will be held in abeyance until the superior court makes its report.

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts



Sarah Anderson, Deputy Clerk

Distribution:

Mail:
Shortell, Owen
Wendlandt, Diane L